

Senate Bill No. 697

Passed the Senate August 31, 2006

Secretary of the Senate

Passed the Assembly August 30, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

Second enrollment

CHAPTER _____

An act to add Article 19.5 (commencing with Section 8430) to Chapter 2 of Part 6 of the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

SB 697, Kuehl. Child care: provider organization: representation.

Existing law provides employees of public schools with the right to be represented in specific matters, including terms and conditions of employment.

This bill would authorize family child care providers, as defined, to choose whether to be represented by a single provider organization, as defined, that would be selected pursuant to a specified petition and election process. The bill would state the intent of the Legislature that the state action exemption to the application of federal and state antitrust laws be fully available to the extent that the activities of the family child care providers and their representatives are authorized under this article.

The bill would authorize the chosen provider organization to operate substitute child care provider pools if those pools are not already being operated or provided in the community; market family child care programs; offer business development programs for family child care providers; meet with state regulatory agencies, as specified; and engage in various types of negotiation with public and private entities that administer state-funded subsidies for child care services, as specified. The bill would prohibit, notwithstanding other provisions of law, any amount appropriated for purposes of the portion of the negotiated reimbursement amount that is in excess of statutory reimbursement formulas from being considered allocations toward meeting the minimum state school funding obligation pursuant to the California Constitution. The bill would specify that the designation of a representative of the family child care providers, as specified, does not prevent the designated provider organization or any other organization or individual from appearing before, or making proposals to, the State Department of Education at a public meeting or hearing, or at any other

department forum. The bill would prohibit a provider organization from calling a strike and would prohibit the state and provider organizations from interfering with, intimidating, restraining, coercing, or discriminating against any family child care provider because the family child care provider joins or refuses to join a provider organization.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is necessary to enact legislation to improve access to, and the stability of, quality child care by providing collective activities and other representation rights to family child care providers.

(b) There is a need to improve the quality of child care and to reduce turnover in the industry that is charged with providing safe and quality care for children in California. The industry suffers from low wages and a lack of benefits for child care providers that is causing high turnover among child care providers. High turnover among providers means that many children are not receiving the type of care they require in order to be prepared for, and adapt successfully to, school settings.

(c) (1) The family child care delivery system is fragmented because each provider enters into individual contracts with agencies that administer payments for subsidized child care. This means that family child care providers have little formal or collective input into the delivery of services that can improve the system. Family child care providers have no formal representation rights and are not covered by any law that grants them the right to collective action.

(2) In order to promote greater efficiency and stability in the child care system, it is necessary to enact legislation that will provide family child care providers with the right to formal representation, to enter into collective negotiations with public and private entities that administer public subsidy payments, and to meet and confer with regulatory agencies to discuss issues of mutual concern.

SEC. 2. Article 19.5 (commencing with Section 8430) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 19.5. Family Child Care Provider Representation

8430. The purpose of this article is to authorize family child care providers to select a provider organization for the purpose of being represented on all matters specified in this article.

8430.5. It is the intent of the Legislature that the state action exemption to the application of federal and state antitrust laws be fully available to the extent that the activities of the family child care providers and their representatives are authorized under this article.

8431. In this article, the following terms shall have the following meanings, unless the context requires otherwise:

(a) “Family child care provider” or “provider” means either of the following:

(1) A family child care home provider that is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(2) An individual who does both of the following:

(A) Provides care in a family child care home that is exempt from the licensing requirements.

(B) Participates in a subsidy program provided for in the alternative payment programs pursuant to Article 3 (commencing with Section 8220) or the child care for recipients of the CalWORKs program pursuant to Article 15.5 (commencing with Section 8350).

(b) “Negotiating representative” means the provider organization that providers may designate, in accordance with the provisions of this article, to be the exclusive representative for the providers.

(c) “Subsidy program” means a state-funded program administered by the State Department of Education or the State Department of Social Services, or both, to assist families in purchasing child care, including, but not limited to, care provided for in Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350).

(d) “Provider organization” means an organization to which both of the following apply:

(1) Includes family child care providers.

(2) Has as one of its main purposes the representation of family child care providers to public and private entities in the state.

(e) “Public Employment Relations Board” or “board” means the board established pursuant to Section 3541 of the Government Code.

8431.5. (a) On or after January 1, 2007, family child care providers who meet the definition of paragraph (1) of subdivision (a) of Section 8431 may form, join, and participate in the activities of provider organizations of their own choice for the purpose of being represented on all matters specified in this article.

(b) Commencing on January 1, 2009, family child care providers who meet the definition of paragraph (2) of subdivision (a) of Section 8431 may form, join, and participate in the activities of provider organizations of their own choice for the purpose of being represented on all matters specified in this article.

(c) A family child care provider may refuse to join or participate in the activities of provider organizations.

(d) Upon the request of a provider organization, the Superintendent and the State Department of Social Services, with the assistance of counties and alternative payment programs, shall collect information regarding family child care providers described in paragraph (2) of subdivision (a) of Section 8431, similar to that collected by the State Department of Social Services regarding providers described in paragraph (1) of subdivision (a) of Section 8431, and make that information available to the provider organization. The costs of collecting the information, if that information has not been previously collected, shall be borne by any provider organization that requests the data.

8432. (a) Family child care providers may designate, in accordance with the provisions of this article, which provider organization, if any, shall be the negotiating representative for the providers.

(b) Only one unit of providers shall exist for purposes of this article and that unit shall consist of all providers in the state.

(c) Notwithstanding subdivision (b), a provider organization may petition, in accordance with the provisions of this article, to

serve as the sole negotiating representative of family child care providers described in paragraph (1) of subdivision (a) of Section 8431, but only if the petition is filed prior to January 1, 2009. Any designation of a provider organization as the negotiating representative pursuant to this subdivision shall be terminated upon the petition of a provider organization to serve as the negotiating representative for a statewide unit of all providers.

8432.5. (a) If a provider organization petitions the board to serve as the negotiating representative for all family child care providers and provides written authorization to serve as the negotiating representative from a majority of the total number of providers in the unit as of January 1 of the year in which the petition is made, the board shall designate that provider organization as representative for all providers in the specified unit, if all of the following are true:

(1) The provider organization does not request an election under subdivision (d).

(2) No other provider organization petitions to serve as the negotiating representative for all family child care providers, as provided in subdivision (b).

(b) If a provider organization petitions the board to serve as the negotiating representative for all family child care providers and provides written authorization to serve as the negotiating representative from at least 30 percent of the total number of providers in the unit as of January 1 of the year in which the petition is made, the petition shall be considered as a request for recognition as representative for all providers in the unit. Upon the filing of the petition with the board, the State Department of Education and the State Department of Social Services shall provide to the board a list of all providers in the unit as of January 1 of the year in which the petition is made. If the unit includes providers described in paragraph (2) of subdivision (a) of Section 8431, and a list of the providers has not been previously prepared, the provider organization, or organizations, that filed the petition shall bear the costs of preparation of the list.

(c) If more than one provider organization petitions to serve as the negotiating representative for all family child care providers in the unit and each petitioning organization has written authorization to serve as the negotiating representative from at

least 30 percent of the total number of providers in the unit, as provided in subdivision (b), an election shall be held within 90 days after the day on which the second petition is filed. The providers in the unit shall be offered the opportunity to choose between the following:

(1) One of the provider organizations to serve as the negotiating representative for all providers in the unit.

(2) No representation.

(d) If only one provider organization petitions to serve as the negotiating representative for family child care providers and the organization has the written authorization to serve as the negotiating representative from at least 30 percent of the total number of family child care providers in the unit, as provided in subdivision (b), the petitioning provider organization may request that an election be held. The providers in the unit shall be offered the opportunity to choose between the following:

(1) Representation by the provider organization.

(2) No representation.

(e) (1) Upon receipt of a petition requesting recognition under this section, the board shall do all of the following:

(A) Verify the number of family child care providers who authorized the provider organization to serve as their negotiating representative under subdivisions (a) to (d), inclusive, as applicable.

(B) Hold elections under this section, as applicable, and verify their results.

(2) The board shall establish procedures to ensure the secrecy of any ballot cast in any election held pursuant to this section.

(3) (A) The costs of verifying the number of family child care providers who have authorized the selection of a provider organization shall be paid by the provider organization that submits the petition requesting recognition under this section.

(B) (i) The costs of the election shall be equally shared by each provider organization placed on the ballot.

(ii) If only one provider organization is placed on the ballot, the provider organization shall pay all costs of the election.

(4) (A) Subject to subparagraph (B), in any election held pursuant to this section, the provider organization that receives the greatest number of votes cast shall be designated as the

exclusive negotiating representative for all family child care providers in the unit.

(B) A provider organization shall not be designated the exclusive negotiating representative for all providers in the unit if the greatest number of votes cast are for the choice of no representation.

8433. (a) (1) The initial designation of a representative pursuant to Section 8432.5 shall be for two or more years.

(2) After the initial period, the designated provider organization shall continue to be the negotiating representative until another election is held.

(b) (1) An election after the initial period of representation may be held only if both of the following are true:

(A) The initial two-year period has elapsed.

(B) A petition is signed by more than 30 percent of the family child care providers in the unit and provided to the board.

(2) The election shall be held in the same manner as provided in Section 8432.5.

(3) The election shall be held no later than 90 days after the signatures on the petition submitted to the board have been verified pursuant to subparagraph (A) of paragraph (1) of subdivision (e) of Section 8432.5.

8433.5. (a) A provider organization designated as the representative for family child care providers pursuant to Section 8432.5 shall be the negotiating representative for all providers in the unit for purposes designated in this article.

(b) A provider organization designated as the negotiating representative shall represent all family child care providers in the unit fairly and without discrimination and without regard to whether the providers are members of the provider organization.

(c) (1) The provider organization designated as the negotiating representative may charge a reasonable service or representation fee to nonmembers for representing them in negotiations, contract administration, and other activities pursuant to subdivision (b).

(2) The service or representation fee may not exceed the annual dues paid by members of the provider organization.

(3) The provider organization may negotiate with any public entity designated in subdivision (b) of Section 8434.7 in order to remit membership dues and any service fees to the provider

organization from deductions to payments made by the public entity to providers.

8434. A provider organization may not call or direct a strike.

8434.5. A provider organization may operate substitute child care provider pools if those pools are not already being operated or provided in the community, may market family child care programs, and may offer business development programs for family child care providers.

8434.6. The State Department of Social Services and other state agencies with responsibility for the licensing of family child care providers shall consult at least once a year with the provider organization designated as the representative for family child care providers in order to identify areas of common concern and to improve consistency in the enforcement of regulations affecting the licensing of family child care providers. In addition, upon written request by the provider organization, the State Department of Social Services and other state agencies shall consult with the negotiating representative for the purpose of engaging in joint discussions regarding proposals for revisions to the rules governing licensing of family child care providers, prior to the publication for comment of those proposals.

8434.7. (a) For purposes of this section, the term “negotiate” includes the duty to do the following:

(1) Confer in good faith at all reasonable times.

(2) Memorialize in writing all of the matters agreed upon as a result of any negotiations.

(b) (1) Upon the request of the provider organization designated as the representative for family child care providers, the State Department of Education or any other state agency that administers a statewide program of publicly funded subsidies for child care services shall negotiate with the provider organization with regard to a reimbursement system for providers. Any agreement reached with regard to reimbursements shall be subject to appropriation by the Legislature and any necessary statutory and regulatory revisions. Notwithstanding subdivision (f) of Section 41202 or any other provision of law, any amount appropriated for purposes of the portion of the negotiated reimbursement amounts that is in excess of statutory reimbursement formulas shall not be considered allocations toward meeting the minimum state school funding obligation

pursuant to Section 8 of Article XVI of the California Constitution.

(2) Upon the request of the negotiating representative, the department, its contractors, or any other state agency that administers a program of publicly funded subsidies for child care services shall negotiate with the provider organization the terms of the provision of child care services under a publicly funded subsidy program within the authority of the entity with which the provider organization negotiates. The parties may negotiate the frequency of, and the processes by which they will engage in, ongoing communications.

(3) To promote efficiency, if mutually agreed upon by all parties, the parties may negotiate collectively with more than one public or private entity that receives or administers state-funded public subsidies for child care services, and may negotiate a written agreement that applies to all parties involved.

(c) An agreement under this section may provide for binding arbitration of grievances.

(d) This section does not authorize negotiations over parent fee levels.

8435. The designation pursuant to this article of a provider organization as the representative for family child care providers does not prohibit the provider organization, or any other organization or individual, from appearing before, or making proposals to, the State Department of Education at a public meeting or hearing, or at any other department forum.

8435.5. (a) The state or provider organizations may not interfere with, intimidate, restrain, coerce, or discriminate against any family child care provider because the family child care provider joins or refuses to join a provider organization.

(b) For purposes of this section, “state” means any of the following:

(1) An agency, board, commission, department, office, or public benefit corporation of the state.

(2) An employee of the state.

(3) A contractor or subcontractor employed by the state.

8436. Family child care providers shall not be deemed to be employees of the state for any purpose of, and the providers shall be deemed to be self-employed for all purposes of, this article.

Approved _____, 2006

Governor